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APPLICATION OF SOUTHWESTERN § BEFORE THE STATE OFFICE  
ELECTRIC POWER COMPANY FOR § OF  
AUTHORITY TO CHANGE RATES § ADMINISTRATIVE HEARINGS

**SOUTHWESTERN ELECTRIC POWER COMPANY'S  
OBJECTIONS TO EASTMAN CHEMICAL COMPANY'S  
SECOND SET OF REQUESTS FOR INFORMATION**

Southwestern Electric Power Company (SWEPCO) objects to Eastman Chemical Company's (Eastman) Second Set of Requests for Information (RFIs), Question No. 2-3 because the request seeks irrelevant information that is not calculated to lead to the discovery of admissible evidence in this proceeding.

**I. NEGOTIATIONS**

SWEPCO received Eastman's Second Set of RFIs on May 4, 2021. Counsel for SWEPCO and Eastman have attempted to negotiate these objections diligently and in good faith. The negotiations were unsuccessful. In accordance with SOAH Order No. 2, these objections are timely filed.

**II. RESERVATION OF RIGHTS**

Based on diligent inquiry, SWEPCO believes that all necessary objections have been raised in this pleading. SWEPCO does not; however, waive its right, if documents are subsequently found that are responsive to these requests, to claim that such documents are privileged if such an objection is determined to be appropriate.

### **III. OBJECTIONS**

#### **Request for Information**

- 2-3 Referring to the rebuttal testimony of SWEPCO witness Charles J. Locke, page 23, lines 6-9:<sup>1</sup>
- a. Provide the number of entities that made adjustments to their BTMG load reporting practices relative to the total number of respondents to the 2017 SPP [Southwest Power Pool] survey.
  - b. Explain specifically how each entity changed its load reporting practices.
  - c. Provide the date when each of the entities changed its respective reporting practice.
  - d. Provide the number of survey respondents that did not make adjustments to their load reporting practices.
  - e. Provide all workpapers, written communications, and documents that support your responses to subparts (a) through (d) of this RFI.

#### **Objection**

SWEPCO objects to this request because it seeks information that is irrelevant and outside the scope of permissible discovery.<sup>2</sup> The Commission's rules define the scope of permissible discovery: "Parties may obtain discovery regarding any matter, not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding."<sup>3</sup> Information is relevant to the subject matter of a proceeding if the information "has any tendency to make a fact more or less probable than it would be" without the information and that "fact is of consequence in determining the action."<sup>4</sup>

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<sup>1</sup> The referenced testimony from Charles Locke's rebuttal at p. 23, lines 6-9, states "Q. HAVE ANY NETWORK CUSTOMERS ADJUSTED THEIR NETWORK LOAD REPORTING PRACTICES BASED ON THE EDUCATIONAL INFORMATION PROVIDED TO STAKEHOLDERS AS A RESULT OF THE 2017 SPP SURVEY? A. Yes. Several entities made adjustments to their load reporting practices."

<sup>2</sup> See Tex. R. Civ. Proc. 192.3(a); 16 TAC § 22.141 (noting scope of discovery to the subject matter in the proceeding); *In re Master Flo Valve Inc.*, 485 S.W.3d 207, 213 (Tex. App.—Houston [14th Dist.] 2016, no pet.) ("Discovery requests must be limited to the relevant time, place and subject matter.").

<sup>3</sup> 16 Tex. Admin. Code § 22.141(a).

<sup>4</sup> Tex. R. Evid. 401.

Although the scope of discovery in Commission proceedings is broad, requests must show a reasonable expectation of obtaining information that will aid in the dispute's resolution.<sup>5</sup> Therefore, discovery requests must be reasonably tailored to include only relevant matters.

Eastman 2-3 arises from a dispute over whether SPP's Open Access Transmission Tariff (OATT) requires SWEPCO to include load served by retail behind-the-meter generation (BTMG). Eastman witness Ali Al-Jabir contends that SWEPCO's treatment of "retail BTMG is not required under the SPP Tariff."<sup>6</sup> Based on this contention, Mr. Al-Jabir recommends disallowing \$5.7 million of SWEPCO's test year transmission charges from SPP. As Mr. Locke's testimony explains, however, the SPP OATT, consistent with the Federal Energy Regulatory Commission (FERC) precedent and policy, requires load served by BTMG to be included in the calculation of network load.<sup>7</sup> What is required under the SPP OATT and whether the FERC-approved tariff is susceptible to the competing interpretation urged by Mr. Al-Jabir is a legal question that is properly raised before FERC.<sup>8</sup>

None of the documents requested in Eastman 2-3 lead to information that can assist in the legal interpretation of the SPP OATT. As noted above, Eastman 2-3 requests information about changes in load reporting practices of SPP members in response to educational information SPP provided its members stemming from a 2017 SPP survey—specifically, the number of entities that made adjustments to their load reporting practices and how or when those changes occurred, as

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<sup>5</sup> *In re Nat'l Lloyd's Ins. Co.*, 532 S.W.3d 794, 808 (Tex. 2017) (quoting *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (orig. proceeding)).

<sup>6</sup> Direct Testimony of Ali Al-Jabir at 3:20-21.

<sup>7</sup> Rebuttal Testimony of Charles J. Locke at 5-8.

<sup>8</sup> *See Roberts Exp., Inc. v. Expert Transp., Inc.*, 842 S.W.2d 766, 771 (Tex. App.—Dallas 1992, no writ) ("Like statutory interpretations, tariff interpretations involve mainly questions of law.").

well as the number of respondents who did not, and anything else a member may have stated in response to these surveys, does not bear on whether the SPP OATT requires members to report load served by BTMG. Nor could this information clarify or dispute the basis for SWEPCO's SPP OATT-related transmission charges. At most, knowledge of load reporting practice changes of other SPP members only shows whether other members are complying with the OATT. As such, they are irrelevant. For the same reasons, the communications, workpapers, and additional supporting documentation broadly requested in subpart (e) are also irrelevant. Communications and documentation about changes in load practices in response to SPP's education that the SPP OATT provides no exception to exclude or "net" BTMG from network load calculations will not assist in the resolution of the disputed issues in this case or in determining the proper legal interpretation of the SPP OATT. To that end, the information Eastman seeks through this RFI is not intended to aid the resolution of any matter at issue in this case. Accordingly, Eastman 2-3 is not reasonably calculated to lead to the discovery of admissible evidence.<sup>9</sup>

In addition, Eastman 2-3 seeks company-specific load information that is the confidential information of non-parties. SPP treats the survey responses—which contain customer-specific load information provided by entities that are not parties to this proceeding—as confidential. SPP is not free to disclose this information to any party who seeks it absent an order from the Administrative Law Judges (ALJs). SWEPCO respectfully requests the ALJs not require SPP or SWEPCO to provide the confidential information of SPP's network customers, especially in this instance when the information is not relevant to the determination of the issues in this case.

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<sup>9</sup> Tex. R. Civ. Proc. 192.3(a).

#### **IV. CONCLUSION**

For the foregoing reasons, SWEPCO respectfully requests that its objections to Eastman's Second Set of RFIs be sustained. SWEPCO further requests any other relief to which it may be justly entitled.

Respectfully submitted,

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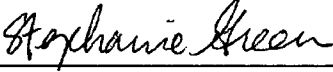
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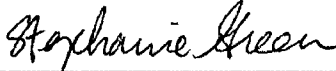
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**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on May 10, 2021, in accordance with the Second Order Suspending Rules issued in Project No. 50664 and Order No. 1 in this matter.

  
Stephanie Green